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SUBJECTS OF THE LEGAL HERITAGE

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ABSTRACT: Legal heritage, as well as the law in general, cannot exist without a subject, by whose will they are created. Accordingly, the subject of legal heritage can be considered as a legal actor – the source of all legal activity, from which come legal acts, legal actions, deeds and in general legal development and other. Preservation and usage of legal heritage depends on the subjects of legal heritage, which ensures the existence of national law through the translation of legal meanings embedded in the legal institutions, in the accumulated legal experience.

The process of translation of legal heritage is provided by the subjects of legal heritage through the development, accumulation and transferring of legal information. The joint interaction of two types of subjects of legal heritage on the preservation, transmission and adaptation of the legal past in accordance with the requirements of the present, is aimed at ensuring the dynamic connection of generations. This is due to the fact that the whole sense of law is formed primarily in the people, crystallized in the image of law and finds its expression in the legal customs, legal institutions and other legal artifacts to which the lawyers give an official, legal nature.

These separate groups of society, united by different socially significant characteristics, have distinct, specific characteristics of their legal cultural development. Each of them uses certain knowledge, traditions, habits, value orientations, experiences, legal views and images and other elements of legal heritage that correspond to their goals, objectives and the degree of satisfaction of their interests.

The formed objects of legal heritage become a source of new, transformed legal information. Accordingly, the active interaction of subjects of legal heritage ensures the production, filtering, rejection or preservation of necessary legal information for further legal development. Taking into account the supposed process of translation of legal heritage, it is appropriate to speak

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about such subjects of legal heritage as: subjects translator – represented by legal professional elite and subject recipient – individuals, participants of legal relations.

It is also possible to single out meta-legal subjects of legal heritage.

INTRODUCTION

The legal heritage, as well as law in general, cannot exist without the subject, by whose will they are created. S. Arkhipov stated that “legal norms, legal relations, all law and order are a subject taken from its external side; law does not belong to itself, it belongs to the legal subject, it is its “property”. The law can therefore be regarded as a legal actor – the source of any legal activity, from which legal assets, legal actions, proceedings, etc. emerge. Analysing the nature of the subject of law, it can be assumed that “not the subject exists for the law, but the law exists for the subject and is defined by him. He or she is the one who determines the whole legal order, all existing legal rules, relations and legal relations” (Arkhipov S.Y., 2005, p. 10).

LEGAL HERITAGE AS COMMUNICATIONAL PROCESS

In the context of legal heritage, its subjects are the participants in a communicational process, i.e., the creator and the recipient of heritage. What is authentic here is that they are not separate subjects of communication, namely: speaker – listener, writer – reader, and other dual models, but participants in a communicative act, in the midst of which common features are produced, i.e., a certain area of interaction is created. For legal heritage, the existence of a communicative act between the communicators allows the objects of the legal heritage to be passed on from generation to generation, to be incorporated and comprehensible, that is to say unambiguous. This is achieved because communicants are attuned to stereotypical sets of codes, values, images, meanings. Thus, the communicative in the context of legal heritage can be expressed in a twofold image – as a “consumer”, a recipient of legal artifacts, traditions, values, mentality

handed down from past generations, and as a “creator” of new objects of law and legal culture, a new, own and self-made world.

In this case, the legal tools are considered as a driving force for the sensory and emotional perception of the rules of law, accompanied by experiences of a passive nature (a sense of suffering and satisfaction) and active (volitional purposefulness). On the basis of this sensory and emotional perception of the legal acts, an individual’s external behaviour is distinguished, thus we can propose the following formula: legal tools – perception by the subject – emotional experiences – further behaviour (lawful or unlawful). (Lapshynov E.V., 2009)

V.A. Bachinin expressed his own understanding of this process, linking together the following components: cognitive model – result of intellectual creative activity of people – legal behavior. Continuing his thought, he states that the cognitive model, as a result of the intellectual creative activity of the person, his thoughts, ideas, intuitions – forms the legal behavior of the individual expressed in legal artifacts (Bachynyn V.A., 1999, p. 122), which, in turn, find their activation in the legal institutions. Legal institutions, facilitate the further establishment of new and complex societal interconnections and permit the avoidance of legal and societal collisions. Accordingly, they are fundamental to the entire system of legal instruments or legal artefacts.

So, the notion of legal institution can be clearly written into the already suggested formula: rules of conduct – perception of them by an individual – value assessment – legal conduct. Such a formula gives sense to the existence of the legal institution, as a legal artifact, because the institution in this sense is not just a system of rules, but a reflection of objective, really existing social relations. As a legal artefact, they have an intrinsic content that can be passed on, transmitted from generation to generation, to identify certain legal traditions that will be the basis for their further development and transformation by future recipients. As a social phenomenon, the recipient will be society. So, legal institutions, as a kind of objects of legal heritage carry out a dynamic link between generations and form their legal identity, acting as an important factor in determining the parameters of the legal model of society. From this perspective, legal institutions are the “boundaries of the field” of those legal alternatives and

possibilities within which the younger generations choose their further development of law.

LITTLE AND GREAT LEGAL TRADITION

Here it is worth mentioning Robert Redfield's research, who used the notion of great and small tradition to assess the way in which culture has changed and the nature of the process of cultural development. (Redfield Robert, 1953, p. 65)

According to his research, a great tradition – represented by a professional community, is purposeful, analysed, processed, cultivated and transmitted. Little traditions – represented mainly by the general majority, reflecting directly the way of life of ordinary people.

The legal heritage is therefore a manifestation of little and great tradition, but the great tradition is formed by specialised entities and is transmitted in a purposeful way.

Therefore, two types of subjects can be identified here: the individual (person) as a creator of little tradition and the specialised subject (lawyer) as a creator of great tradition.

“Little tradition” is formed by legal customs, rites, rituals and other phenomena, which “have a symbolic and sometimes metaphysical influence”, (Eizenshtadt Sh., 1999, P. 80) “comprising rules and norms of human behaviour which are respected and enforced as unwritten law”, is a system of law and order, (Fedotov V.A., 2010, p. 62) that are created by popular life in accordance with legal customs and the needs of popular life, which are commonly recognised (Ryttykh A.A., 1904, p. 19). Legal custom, according to Trubetskoy, differs from common custom in that it includes characteristics of legal norms, norms that give freedom of action to one person and interfere with the freedom of others (Trubetskoi E.N., 1998, p. 97, 99). According to law theorist V. Khvostov, “Under the name of custom is understood a legal norm, which has received mandatory force as a result of its longterm usage in practice and the people's habit to it. Thus, the power of custom minds lays not on the state power, but on the people's habit” (Khvostov V.M., 2015). The force that produces custom, according

to V. Sergijovic, “is people’s knowledge, which corresponds to people’s law. Initially the narrowed actions of the people were absolutely in harmony with their will and were directly conditioned by it. But, in the measure of their accumulation, they themselves began to press on the will and determine its direction (Serheevych V.Y., 2004, p. 265). In context of Legal heritage, the subjects of law is the individual as a particular combination of spiritual experience, freedom as an approach and method of thought and tradition as one of the sources of thought. In the words of M. Kozubry, a person “acts as a creator, author and addressee of law” (Koziubra M.I., 2015, p. 5).

The human being plays an important role by virtue of the fact that it is a bearer of birthright. The constants in the human factor (stability and identity of physiological and psychological risks), taken not in an isolated form (organizations, institutions, organizations), but on an individual level. The rights and freedoms of an individual, which are inherent in his or her nature, are reflected and enshrined in the legal rights of the individual (Avramenko L.V., 2014, p. 6).

A “great tradition” is on the other hand, formed in a purposeful way and is a manifestation of a certain professionalism and dogmatism in the creation, production and transmission of certain information. This is why a great tradition is considered to be shaped by professionals. To such actors who identify and use legal knowledge, which can manifest itself in different ways, two types of transmitting actors can be imagined: legal scholars and legal practitioners. From the hermeneutic viewpoint, accordingly, the addressee as a rule does not have sufficient knowledge, skills and means to verify the information received and is compelled to take them on faith. The fact that they are not aware of the knowledge, skills and tools to verify the information they have acquired and are forced to take them on faith.

SUBJECTS OF LEGAL HERITAGE

The subjects of legal heritage can be divided into legal scholars and legal practitioners from the position of the great tradition and common individuals and participants in legal relations from the position of the

small tradition, this is recipients. These particular groups of society, united by different socially significant characteristics, have distinctive, specific characteristics of their legal and cultural development. Thus, in the words of M. Smolensky, the normative attitude to decision-making procedures and rules of legal behavior is inherent in a group of people who “share a common sense of the legal game” within the framework of a common socio-cultural symbolism”, in which they are involved in one way or another. Every cultural-integrative partnership, which has certain legal notes and interests, has its own legal culture. It has an intersubjective nature, arises and exists only in the context of social interaction (Smolenskyi M.B., 2002, p. 27).

This means that each social group uses certain knowledge, traditions, customs, values and experience, legal attitudes and images and other elements of legal knowledge that meet their goals, objectives and the level of satisfaction of their interests.

The differentiation of such groups is made according to different characteristics: class, national, party, production, economic, everyday life, occupation, age (demographic), etc. Within the framework of the great legal tradition, the process of its formation and influence on the little legal tradition – such a criterion of social differentiation became the professional signs because in today’s world the representatives of professional groups as individuals are significantly formed under the influence of their indirect identity. This means that their cultural and legal socialisation takes place on the basis of their profession and related activities.

For example, describing the legal heritage translator or as Nikolai Sokolov said – the social and professional group of lawyers, we can identify a system of legal knowledge, assessments, perceptions, stereotypes, traditions, habits and so on (Sokolov N.Ya., 1998, p. 112), which are inherent to this group.

The degree of assimilation and practical use by lawyers (as a social and professional group) of legal values transmitted in the order of succession through legal upbringing and legal education determines the legal professional culture of lawyers. The development and inheritance lie not only in the transition of knowledge, but also in its development. At V.K. Babayev’s opinion for transfer, preservation and actualization of legal heritage the

most necessary impulse serves intellectual and creative base (Sirikh V. M., 2015, p. 456). It is shaped and established in the various entities of the legal heritage, at a “genetic” level in the form of a knowledge resources, skills and abilities that must develop and multiply the heritage.

At the same time, professional legal culture expresses the level of cognition of legal phenomena, achievements and values in the sphere of law. The deeper and more complete the penetration of the lawyer into the essence of the legal phenomena, the greater are preconditions for the further effective participation in all stages of the process of legal regulation. The sources of such penetration and formation of legal submissions, in V. Chefranov’s opinion, is the legal information, which has a multi-channel nature and is connected both with the current law, and with the past (Chefranov V.A., 1976, p. 40), that is to say legal heritage.

A. Mikhailov, investigating the evolution of ideas of legal dogmatics in the Romano-Germanic tradition, note that it was the tradition of dogmatic jurisprudence that shaped the style of thinking of Romano-Germanic jurists, The legal doctrine is still one of the main ways of developing the law, and the legal dogmatics itself remains one of the main ways of developing the law (Mykhailov A.M., 2012, p. 10).

The legal professional elite is a highly concentrated group of people who directly or indirectly determines the basic parameters of law-making and law-enforcement activities, ensure implementation of the legitimacy and law enforcement, constitute the main body of employees of various kinds of legal bodies, etc. Lawyer professional – a key figure of any legal activity and created as a result of the legal institutions (Petrov A.V., Horbatova M.K., 2007). It is the efforts of legal professionals that create, in Yusupov’s words, “legal traditions”, which, in his opinion, is a totality of stable, created results of legal development of the functioning of the system of legislation, law and order, law enforcement and procedural activity.

In reviewing the subjects-recipients of law and legal heritage, it should be noted that they are people as a special combination of spiritual experience, freedom as an approach and method of thought and tradition as one of the sources of thought. In the words of N. I. Kozubry, people “act as creators, organizers and addressees of law” (Koziubra M.I., 2015, p. 5).

This idea corresponds to S. Sofronova's idea. She suggested that the state should be considered among the subjects of legal heritage, the aim of which is to create a system of legal interaction, legal communication, which aim is to harmonizing of wills of its citizens to form legal relations, ensure the implementation of their legal interests. The legal fheritage is therefore a platform for a multitude of open, mutually interconnected recipient and transmitting entities.

In legal scholarship and in the context of the development and existence of legal heritage, it is possible to identify a special entity concerned with the existence, preservation and translation of the legal past. Such subject is a bearer of universal and non alienated national values, traditions, mentality and is referred to the "meta-legal subjects" (Arkhipov S.Y., 2005, p. 36) according to S. Arkhipov. In his opinion, the nation (people) is a special legal phenomenon that does not fit into the traditional scheme of the subject – object of law. Because of their legal characteristics, nations and peoples cannot be classified as traditional subjects of law, since they, as a general rule, are not indirect participants in legal relations, as they do not fit into classical legal forms. On the other hand, the nation and the people are phenomena of spiritual order, which are expressed in the general legal conscience, way of thinking, in the legal culture of people (Arkhipov S.Y., 2005, p. 36).

In explaining their nature, S. Arkhipov pays attention to the fact that the meta-legal subjects have a powerful influence (through the subjects-recipients and translators of legal heritage) on the entire legal sphere. This confirms the persistent tendency to analyse modern legal systems as national or people's legal systems.

CONCLUSION

In view of the fact that the interaction between the subjects of legal heritage is a communicative act in which general principles are created, the legal framework is not just a memory of the past, but a normative framework for the individual, for particular social groups and for society as a whole. And the communicative act of actualization of the legal past

actively influences the formation of legal attitudes, the formation and development of certain legal attitudes and legal competence, the formation of a certain type of legal behaviour, and thus helps to unite individuals in social groups and in a single social system.

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